

Message Text

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PAGE 01 USBERL 02342 271633Z

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C O N F I D E N T I A L USBERLIN 2342

LIMDIS

E.O. 11652: GDS

TAGS: MOSP, WB, GE, US, UR

SUBJECT: EXFILTRATION

REFS: (A) BONN 19234; (B) USBERLIN 2337

(C) BERLIN 1566; 10 SEPT 73

(D) GREENWALD MEMO NOV 25, 74 (POUCHED BONN

AND EUR/CE); (E) BERLIN A-159, Q JULY 74

1. SUMMARY: MISSION AGREES THAT SEVERANCE OF LINK BETWEEN PROFESSIONAL GERMAN EXFILTRATION GANGS AND U.S. PERSONNEL COULD PROVIDE MUCH DESIRED EXTRA INSURANCE TO SUPPLEMENT MEASURES NOTED REF A. PAST EFFORTS TOWARD THIS END HAVE BEEN UNSUCCESSFUL BECAUSE OF WEST GERMAN POLITICAL RELUCTANCE TO TREAT EXFILTRATION AS CRIME. MISSION SUGGESTS POSSIBLE EFFORT BY EMBASSY TO PERSUADE FRG (WHOSE LEAD SENAT WILL FOLLOW) THAT TOUGHER MEASURES SHOULD BE INSTITUTED AGAINST GERMANS WHERE EFFORTS ARE MADE TO RECRUIT ALLIED PERSONNEL, THEREBY JEOPARDIZING ALLIED ACCESS RIGHTS, ABOUT WHICH FRG IS PRESUMABLY AS CONCERNED AS WE ARE. END SUMMARY.

2. WHILE VIGOROUS IMPLEMENTATION ALL MEASURES REF B SHOULD EFFECTIVELY CURTAIL US INVOLVEMENT IN EXFILTRATION, MISSION AGREES WITH EMBASSY (REF A) THAT SEVERANCE OF
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PAGE 02 USBERL 02342 271633Z

LINK BETWEEN PROFESSIONAL ORGANIZERS AND U.S. SERVICEMEN OR EMPLOYEES IS ALSO IMPORTANT. WE HAVE BEEN SEEKING

EFFECTIVE MEASURES AGAINST THIS LINK FOR MORE THAN A YEAR. WE HAVE INSTITUTED STRICTER HIRING PRACTICES FOR CIVILIAN EMPLOYEES (REF B PARA 9D) AND ARE EXPLORING ADDING TO CRITERIA FOR "OFF LIMITS" SANCTIONS THOSE ESTABLISHMENTS RUN OR FREQUENTED BY INDIVIDUALS WHO ABET OR ASSIST US FORCES' PARTICIPATION IN EXFILTRATION. HOWEVER, OTHER ADMINISTRATIVE MEASURES EFFECTIVE AGAINST NON-GERMANS -- EXPULSION AND DENIAL OF RESIDENCE PERMIT -- CANNOT BE USED AGAINST GERMANS WHO DO RECRUITING. IN FACT MOST EFFECTIVE MEASURES AGAINST THIS LINK WOULD HAVE TO BE IMPLEMENTED AGAINST GERMANS IN GERMAN COURTS.

3. GERMAN LAW DOES NOT MAKE EXFILTRATION CRIME, BUT RECRUITERS WHO ENGAGE OR SOLICIT ASSISTANCE OF MEMBERS OF US FORCES IN CARRYING OUT EXFILTRATION IN RETURN FOR MONEY COULD, IN OUR VIEW, BE CHARGED UNDER ARTICLE 3 OF ALLIED ORDINANCE 511 FOR CORRUPTION, BRIBERY, FORGERY, AN/OR FRAUD WITH TOTAL POTENTIAL LIABILITY OF TWENTY YEARS IMPRISONMENT AND FINE OF DM 100,000. PROSECUTION FOR FORGERY MIGHT ALSO BE POSSIBLE IN SOM INSTANCES UNDER SEC 267 OF GERMAN CRIMINAL CODE WHICH CARRIES MAXIMUM PENALTY OF FIVE YEARS IN JAIL.

4. DESPITE THESE PUNITIVE PROVISIONS, GERMAN AUTHORITIES ARE RELUCTANT TO TAKE MEANINGFUL ACTION WITHOUT ATTRIBUTING IMPETUS FOR SUCH ACTION TO US AUTHORITIES, AND COULD NOT IN ANY EVENT PROSECUTE WITHOUT CALLING US WITNESSES AND THEREBY PUBLICLY HIGHLIGHTING AMERICAN INVOLVEMENT. THIS RELUCTANCE WAS SHOWN LAST FEBRUARY WHEN WE PROPOSED TO SENATE AUTHORITIES THAT DITTMAN BROTHERS BE PROSECUTED (UNDER LEGISLATION NOTED PARA 3) FOR ATTEMPTING TO RECRUIT A USAF OFFICER. SENATOR KORBER TOLD US UNDER GERMAN LEGAL PRACTICE PENALTIES WOULD PROBABLY BE SMALL (TWO YEARS PROBATION) AND AMERICANS WOULD BE INVOLVED IN PUBLIC TRIAL. SENATE HOPED WE COULD FIND ANOTHER SOLUTION.

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PAGE 03 USBERL 02342 271633Z

5. CASE OF KAY MIERENDORFF, WHO WAS BLUFFED (WE THINK) BY MISSION TO DROP HIS EXFILTRATION ACTIVITIES IN BERLIN UNDER THREAT OF PROSECUTION UNDER ALLIED LEGISLATION (REFC). IS ONLY EXAMPLE WE CAN IDENTIFY IN LAST EIGHT YEARS OF SUCCESSFUL ACTION AGAINST GERMAN EXFILTRATION RECRUITER. (RECRUITER MERVIN RAY SMITH AND AMERICAN, IS NOW OUT OF EXFILTRATION BUSINESS BECAUSE OF CONVICTION ON DRUG CHARGES, BUT EVIDENCE IN RECENT CASES INDICATES HIS GERMAN WIFE STILL ACTIVE.) MISSION ACTION SUCCESSFUL IN UNIQUE MIERENDORFF CASE BECAUSE TWO VW VANS THAT

HAD BEEN IMPOUNDED BY PROVOST MARSHAL IN EXFILTRATION CASE WERE OWNED BY MIERENDORFF AND MIERENDORFF BRASHLY TRIED TO GET THEM BACK. IN RECENT CASES VEHICLES HAVE BEEN OWNED BY US PERSONNEL AND, MOREOVER, WE EXPECT MOST EXFILTRATION GANGS SIMPLY TO PASS ON COST OF CONFISCATED VEHICLES WITHOUT ATTEMPTING TO RECOVER THEM.

6. RECENTLY ANOTHER FACET OF MIERENDORFF CASE AGAIN DREW OUT GERMAN RELUCTANCE TO ACT IN INTEREST AGAINST EXFILTRATORS. SUSPICION EXISTS THAT MIERENDORFF, WHOSE BROTHER RECEIVED TWELVE YEAR JAIL SENTENCE AT GDR EXFILTRATION SHOW-TRIAL THIS YEAR, MAY NOW BE COOPERATING WITH GDR TO PROVOKE EMBARRASSING DISCLOSURES OF GERMAN AND ALLIED ATTITUDES TOWARD EXFILTRATION (REF D). WE HAVE ASKED SENAT TO MAKE TOUGH RESPONSE TO ONE OF HIS PROVOCATIONS (AN APPLICATION TO BE REGISTERED FOR TAX PURPOSES IN WEST BERLIN AS A PROFESSIONAL EXFILTRATOR). SENAT HAS PUT US OFF, DESPITE OUR PRESSING POINT THAT SUCH A PROVOCATION BY MIERENDORFF CAN CREATE RECORD OF SEEMING SENAT CONNIVANCE IN EXFILTRATION.

7. COMPARISON OF WEST BERLIN AND GDR PENALTIES AGAINST EXFILTRATORS HIGHLIGHTS DIFFERENT POINTS OF VIEW ON THIS ISSUE. HEAVIEST WEST BERLIN FINE FOR EXFILTRATION-RELATED ACTIVITY (FRAUD) IN 1973 WAS DM 1200 WHEREAS AVERAGE SENTENCE IMPOSED BY GDR WAS FIVE YEAR EIGHT MONTHS IMPRISONMENT (REF E). WE ARE NOT AWARE OF ANY INSTANCE IN WHICH MAJOR EXFILTRATION FIGURE WAS CONVICTED BY GERMANS OF OTHER CRIMINAL OFFENSE AND THUS PUT OUT OF BUSINESS EVEN THOUGH WE ARE CONFIDENTIAL
CONFIDENTIAL

PAGE 04 USBERL 02342 271633Z

TOLD SUCH PEOPLE ARE USUALLY DEEPLY INVOLVED IN VARIOUS OTHER RACKETS.

8. WE BELIEVE ABOVE FACTS SHOW THAT OUR POST INABILITY (EXCEPT IN FEW CASES) TO DEAL WITH RECRUITER WHO IS NOT MEMBER OF US FORCES DERIVES FROM BOTH OUR OWN CONSTRAINTS, AND INABILITY OF WEST BERLIN AUTHORITIES TO ACT IN MEANINGFUL WAY AGAINST EXFILTRATION ACTIVISTS. MAJOR MOVE AGAINST EXFILTRATION WOULD REQUIRE ACT OF POLITICAL WILL WHOSE IMPULSE CLEARLY WOULD HAVE TO COME FROM NATIONAL LEVEL AND WOULD IMPLY RE-EVALUATION OF FUNDAMENTAL NATIONAL VIEW.

9. THERE IS IN ALL THIS A DILEMMA BOTH FOR US AND FOR GERMANS. WE BOTH WISH TO AVOID ENDANGERING ACCESS RIGHTS ESSENTIAL TO BERLIN'S VIABILITY. ON OTHER HAND THERE IS RELUCTANCE FOR POLITICAL REASONS,

PARTICULARLY ON GERMAN SIDE, TO TAKE STRONG MEASURES AGAINST EXFILTRATORS LEST THEY GIVE APPEARANCE OF CONDONING GDR'S VIOLATIONS OF HUMAN RIGHTS.

10. EMB BONN MAY WISH TO EXAMINE THIS PROBLEM WITH FRG BEARING IN MIND DISTINCTION BETWEEN EXFILTRATION IN GENERAL -- WHICH IS INNER-GERMAN PROBLEM -AND EXFILTRATIONS IN WHICH ALLIED ACCESS RIGHTS ARE MISUSED FOR PRIVATE PROFIT AND SO ENDANGER AN ESSENTIAL PART OF BERLIN'S VIABILITY. IN LATTER SITUATION, IT MAY BE POSSIBLE TO PERSUADE BOTH OFFICIAL AND PRIVATE GERMANS ON NEED FOR STRONGER MEASURES TO PREVENT GERMAN EXFILTRATORS FROM TURNING TO US SOLDIERS. KLEIN

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